

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

BROWNFIELD OIL COMPANY, INC.
AND GRIGSBY FARMS

Respondents

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Docket No. CWA-07-2011-0110

CWA SECTION 311 CLASS II
CONSENT AGREEMENT AND
FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 7, who has in turn delegated them to the the Director of Air and Waste Management Division, EPA, Region 7 ("Complainant").

2. Respondents are a corporation and a business organized under the laws of Missouri with places of business located at 1415 Riley Drive, Moberly, MO 65270 and 20409 State Highway HH, Elmer, Missouri, 63538. The Respondents are both a 'person' within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7) and 40 CFR §112.2.

3. Respondents were the owner and/or operator of an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. §1321(a)(10), and 40 CFR §112.2, which was located at or near 20409 State Highway HH, Elmer, Missouri, 63538 ("facility").

4. The Chariton River is a navigable water of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.

5. Section 311(b)(3) of the Act prohibits the discharge of oil or a hazardous substance into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the

United States are defined in 40 CFR §110.3 to include discharges of oil that violate applicable water quality standards or cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

Allegations

7. On or about March 8, 2009, Respondents discharged 160 barrels of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 CFR §110.1, from the facility into or upon the Chariton River or adjoining shorelines.
8. The Chariton River is a navigable water of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.
9. Respondents' March 8, 2009 discharge of oil from the facility caused a sheen upon or discoloration of the surface of the Chariton River, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, which implements Sections 311(b)(3) and (b)(4) of the Act.
10. Respondents' March 8, 2009 discharge of oil from the facility into or upon the Chariton River or adjoining shorelines in a quantity that has been determined may be harmful under 40 CFR §110.3 violated Section 311(b)(3) of the Act.

CONSENT AGREEMENT

11. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.
12. Respondents admit the jurisdictional allegations of the Complaint and this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.
13. Respondents neither admit nor deny the factual allegations and legal conclusions set forth above.
14. Respondents waive their right to a judicial or administrative hearing on any issue of fact or law set forth above, and their right to appeal the Final Order.
15. Respondents and Complainant agree to conciliate the matters set forth in the Complaint without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.
16. This CA/FO resolves all civil and administrative claims for the violations of the Act specifically alleged above.

17. Nothing contained in this CA/FO shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

18. The undersigned representatives of the Respondents certify that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondents to it.

19. Respondents certify by the signing of this CA/FO that, to the best of their knowledge, Respondents are in compliance with the requirements of Section 311(b) of the Act.

20. Respondents consent to the payment of a civil penalty of \$18,750 as set forth in paragraph 1 of the Final Order.

21. Respondents understand that failure to pay any portion of the civil penalty on the date the same is due shall cause the entire civil penalty assessed to be immediately due and owing, and may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate, together with any late charges and or handling charges which may be authorized by statute.

FINAL ORDER

Pursuant to the authority of Section 311 of the CWA, 42 U.S.C. § 132, and according to terms of the Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondents shall pay a civil penalty of Eighteen Thousand Seven Hundred and Fifty Dollars (\$18,750) within thirty (30) days of the entry of this Final Order. Payment shall be by cashiers or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Payment shall identify the Respondents by name and docket number (CWA-07-2011-0110). Copies of the check shall be mailed to:

Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this CA/FO shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

4. This Final Order shall apply to and be binding upon Respondents and Respondent's agents, successors and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

5. Respondents and Complainant shall bear their respective costs and attorney's fees.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Becky Weber
Director
Air and Waste Management Division

Date

Kristen Nazar
Assistant Regional Counsel

RESPONDENT:
BROWNFIELD OIL COMPANY, INC.

Date _____

Mr. Matt Brownfield
Brownfield Oil Company, Inc.
1415 Riley Drive
Moberly, MO 65270

RESPONDENT:
GRIGSBY FARMS

Date _____

Mr. Larry Grigsby
Grigsby Farms
20409 State Highway HH
Elmer, MO 63538

IT IS SO ORDERED.

Robert Patrick
Regional Judicial Officer

Date _____